84-1364

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IN

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No._____

ROBERT J. WILLIAMSON, Petitioner

-v-

JOHN P. GILLMOR, Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SUPREME COURT OF HAWAII
AND APPENDIX

PETITION FOR WRIT OF CERTIORARI

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HIPP

QUESTIONS PRESENTED

1. Whether it is constitutional under the Fourteenth Amendment for the Court to exhibit collusion and other lack of due process with the Respondent who had previously provided pre-law pratice for the head of the Supreme Court and has a wife as a judge in the Family Court.

2. Whether it is constitutional under the Seventh Amendment for the Circuit Court to deny a demanded jury trial with a Summary Judgment claiming collaterial estoppel where there is substancial conflicting evidence allowed to be presented for the first time.

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APPENDIX I

Part of a transcript of a decision in a hearing on January 23, 1982 in the Family Court of the First Circuit of Hawaii in Vaughan v. Williamson, FC-M No. 316, per Honorable Daniel G. Heely. A-1

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Decision and Order Granting Defendant's Motion for Summary Judgment in the Circuit Court of the First Circuit of Hawaii in Williamson v. Gillmor, No. 75460, Dated February 13, 1984 per Honorable Philip T. Chun. A-3

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO._____

ROBERT J. WILLIAMSON, Petitioner

v.

JOHN P. GILLMOR, Respondent

PETITION FOR WRIT OF CERTIORARI

ROBERT J. WILLIAMSON petitions for a Writ of Certiorari to review the opinions in the Circuit Court, Intermediate Court of Appeals and Supreme Court of Hawaii relative to a Summary Judgment.

OPINION BELOW

The decision to bar the Respondent from the Family Court is shown in the transcript A-1 . The opinion of the Circuit Court for Summary Judgment is shown in A-3 . The opinion of the Inter-

mediate Court of Appeals is shown in the Memorandum Opinion shown in A-6 , and the opinion of the Hawaii Supreme Court is shown in A-16.

JURISDICTION

The final decision in the Hawaii Supreme Court was entered on November 30, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

This case involves portions of the Seventh and Fourteenth Amendment to the Constitution of the United States which provides as follows:

U.S. Const. amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,....

U.S. Const. amendment XIV sec. 1

... no state shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The case also involves portions of Hawaii Rules of Civil Procedure 60(b)(3) and also the Federal Rules of Procedures which provides as follows:

H.R.C.P. 60(b)(3)

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: ... (3) fraud (whether heretofore denominated entrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; ....

STATEMENT OF CASE

The Respondent represented Mrs. Vaughan in a foreign judgment claim in Hawaii on February 13, 1975 for a divorce in Massachusetts on November 26, 1967. The plaintiff, Mrs. Vaughan, was the prevailing party and started garnishment of my salary. My counsel was discharged of record for lack of interest and knowledge, similar to the previous counsel in Massachusetts. The Petitioner appealed the case, pro se, in Vaughan v. Williamson, 621 P 2d 387 and the case was remanded in favor of the Petitioner with no reference to counsel's conduct. During this appeal preparation, the Petitioner discovered the counsel's fraud and misconduct. However, not until much later, did the Petitioner find that the Respondent's wife was a judge and the Respondent clerked for the head of the Supreme Court prior to his law

practice.

Relative to Mrs. Vaughan's case, FC-M No. 316, a motion pursuant to Rule 60(b)(3), similar to the Federal Rules of Civil Procedure, was initiated independent of the appeal of the above case but only considered as part of the hearings for a remand to the Family Court. The arguements relative to Rule 60(b)(3) were presented by the Petitioner with no rebuttal by the Respondent in the Family Court. Over a period of 8 years the record reflected collusion, a lack of due process, with 5 Family Court Judges. The lack of due process was first referred to the Constitution in the first appeal hearing of October 27, 1960 and then referred to due process from then on. The lack of due process was claimed throughout the proceedings but ignored until an appeal referred to it in paragraph I.A. Appendix III, Memorandum

Opinion. The mention of lack of due process in the Opinion was not even related to the claims. Action was taken to include the Respondent in the suit in the Family Court but he was protected by the Court by declaring that he could not be a part of the suit in the Family Court of the First Circuit as shown in the transcript, Appendix I. With the Family Court providing the protection for the Respondent an independent suit was initiated in the First Circuit Court pursuant to Rule 60(b)(3). After additional misconduct the Circuit Court provided a Summary Judgment to the Respondent with a claim of collateral estoppel. The Respondent had never denied his conduct in the Family Court and the arguements of the Petitioner had been ignored as reflected in the decision Appendix II. The Summary Judgment denied a demanded jury trial pursuant to

the 7th Amendment where there were conflicting evidence for the first time which was revealed by the Respondent's interrogatories in the Circuit Court, case No. 75460. Under the 7th Amendment the right of jury, where there was conflicting evidence, was first argued in the Circuit Court but ignored throughout the proceedings until mentioned in the appeal, paragraph II, Appendix III. The Intermediate Court upheld the Summary Judgment of the lower Court and denied the Petitioner a hearing, Appendix III. This decision was confirmed in the Supreme Court, Appendix IV.

REASON FOR GRANTING THE PETITION

THE MEMORANDUM OPINION, APPENDIX III, HAS NO MERIT WHEN THE FACTS OF CLAIMS IN THE PETITIONER-APPELLANT-PLAINTIFF'S BRIEFS AND RECORD WERE FALSIFIED OR TAKEN OUT OF CONTEXT, IGNORED APPENDIX 1, AND COPIED REFERENCES IN THE ANSWERING BRIEF WITHOUT READING OR CONSIDERING THE PETITIONER'S OPPOSING ARGUEMENTS IN THE REPLY BRIEF.

In Memorandum Opinion, pargraph I, Appendix III

In the referenced case, Hulsman v Hemmeter Development, 65 Haw 58, 647 P 2d 713 (1982), there were no material facts as the seller of a gun has no control over the action of the buyer provided the seller is within the law. There is no connection to the case at bar where the conduct of Mr. Gillmor was presented in writing as a party to the first case but it had to be stricken by the same Judge that barred him as a party. This same Judge later could only make the decision in favor of Mrs. Vaughan on her fraud and misconduct.

The lack of litigation is similar to a default judgment case, Yuen v London Guar. & Acc. Co. Et Al, 40 Haw 213 which will be discussed later.

In Vlasaty v Pacific Club, 4 Haw App. 556, 670 P 2d 827 (1983), Vlasaty failed to provide the material facts by not providing a transcript of the hearing, an affidavit as required by Rule 56(f) H.R.C.P. and provided only hearsay information within the confines of employment. This is not the case at bar as the material facts are in the Family Court but had to be ignored by the Court as Mr. Gillmor was barred as a party to the suit by direction of the Court. In Vlasaty's case he had the opportunity to document the material facts for the Court to review. This he did not do.

The only way a favorable decision could have been made for the Respondent-Appellee-Defendant in the Memorandum

Opinion was to ignore the proof of barring Mr. Gillmor as documented in Appendix I. (no due process provided)

The reference, Bank of Honolulu v Anderson, 3 Haw App. 545, 654 P 2d 1370 (1982), is not related to the case at bar. The Defendant had no material facts but only hopes as the bank followed the written contract, a familiar daily procedure. In the case at bar the F. C. barred the actions of Mr. Gillmor by declaring he could not be a party to the suit.

In error or otherwise the Memorandum Opinion claimed that the Circuit Court reviewed the same material facts that the Family Court had in a Motion for Relief under Rule 60(b)(3). The conduct of Mr. Gillmor (material facts) were barred by the Family Court, the same Judge that made the decision. The barring of Mr. Gillmor's conduct is

confirmed by the decision in the Family Court and its Appeal No. 8798 as there were no references to Mr. Gillmor or his conduct.

In Memorandum Opinion, paragraph I.A.

It is claimed that the particulars of the charges against Mr. Gillmor are reflected in 14 lines. Some of the particulars are outlined in Williamson's 25 page Complaint, Affidavit and exhibits. Only some of the particulars are required in the Complaint.

> General damages, which are not required to be specifically stated pursuant to H.R.C.P., Rule 9(g), are those damages which usally accompany the kind of wrong doing alleged in the complaint so that the mere allegation of the wrong gives sufficient notice to the opposite party of the kind of damages that will be claimed at trial. Ellis v Crockett, 51 Haw 45; 451 P 2d 814 (1969), Augustince v Southern Bell Telephone & Telegraph Co., 91 So. 2d 320, 323 (1956).

By this 14 line restriction of the particulars the material facts are taken out of context and the claims are distort-

ed and are not accurately reflected in the Memorandum Opinion. The claims, almost completely, in the Complaint are those that were barred by the action of the Family Court with the same Judge doing the barring and making the decision. Therefore, the Petitioner agrees that the remaining claims in the Family Court are completely devoid of merit and made so by the Judge of the Court. The Appeals Court claimed they reviewed the records of FC-M No. 316 but they had not been moved up and some volumes had been checked out to the Family Court clerk since September 1984 during the Appeal.

In Memorandum Opinion, paragraph I.B.

The Petitioner wishes that the Respondent and the Appeals Court would make up their mind in defending one attorney to others. First, the Respondent claimed in the reference of

In re Bishop Estated, 36 Haw 403, 416 (1943) that it was law. Then, he falsified the statements in Ellis v Crockett, 51 Haw 45, to attempt to make them confirm.

In the Memorandum Opinion, Appendix III Ellis v Crockett was correctly stated and referenced. However, none of these cases apply as the Courts did not restrict the party's litigation. In the case at bar a demand for an independent suit was required from the result of one attorney as Judge protecting another attorney. In the above references they were free to arrange the parties and terms in the suit. In the Ellis v Crockett case the Plaintiff was also free to introduce the Compulsary Counterclaim to prevent multiplicity of actions but he did not.

In the case at bar this was not true. Mr. Gillmor was barred from the first suit and therefore, his conduct had to be

strickened from the first proceedings. Defensive Collaterial Estoppel can be Applied where in the first suit there is a full and fair opportunity to litigate the issues effectively. Currie, Mutuality of Collaterial Estoppel; Limits of the Bernhard Doctrine, 9 Stan. L. Rev. 281, 308. There were restrictions imposted by the Family Court. References and a good example of the requirement for a full and fair opportunity to litigate and issue effectively can be related to a Default Judgment. In re Van Buren, 2 Fed. 643, See also 128 A.L.R. 480 for collection of authorities. A Default Judgment can be collected for the claims in the Complaint but can not claim res judicarta/estoppel in a second suit when the issues had not been heard effectively in the first.

An example of defending Mr. Gillmor is when the Honorable Judge Heely in the

Family Court claimed in a decision that the opposition presented an oral arguement in the hearing. In fact Mr. Gillmor never defended his conduct in a written or oral arguement but depended on the Court to circumvent his actions. The final protection was provided in Appendix I by barring him as a party in the suit.

In addition Judge Heely quized me extensively on a minor detail which he had the information in front of him but ignored the issue of Mr. Gillmor falsifying an Order prepared by him for the Court. Since Mr. Gillmor was barred as a party, the Family Court could ignore his conduct.

Ignoring ex parte hearings without applications, proof of secret conferences between Mr. Gillmor and the Courts, perjury, and the rules of the Court, the Petitioner has not been provided due process pursuant to the 14th Amendment.

Mr. Gillmor obtained a money judgment for $40,067.05 in the Family Court by falsifying the three Massachussetts executions for the same amount and the Court ignored his fraud.

WITH AMENDMENT 7 OF THE CONSTITUTION AS LAW MR. GILLMOR CAN NOT BE GIVEN SPECIAL PRIVILEGES BY CLAIMING COLLATERIAL ESTOPPEL WHEN IT CAN NOT APPLY IN THIS CASE AND CIRCUMVENTED A TRIAL BY JURY.

In Memorandum Opinion, paragraph II, Appendix III

As stated in the Complaint, January 18, 1983: "12. Mr. Gillmor has conceded to fraud and misconduct in the Family Court by his silence but now has an opportunity to defend himself with jury in the Circuit Court."

Mr. Gillmor, for 8 years in the Family Court, did not respond to any of his conduct claimed throughout the proceedings but was protected by the Court. When a Motion was introduced to bring him in as a party, the Court protected him by

declaring he could not be a party to the suit in the Family Court. Appendix I.

As a lone defender in the suit in the Circuit Court, No. 75460, Mr. Gillmor was forced to argue his misconduct and fraud for the first time in his interrogatories. The conflicting facts were not available to be litigated in the Family Court but shall be in a demanded jury trial in the Circuit Court.

> Where there are material issues of fact in dispute, a case does not meet the requirements of HRCP Rule 56(c). Gum v Nakamura, 57 Haw 39, 549 P 2d 471, 472, (1976), Waterhouse v Capital Investment Co., 44 Haw 235, 249, 353 P 2d 1007, 1016 (1960)

Just because the mutuality requirement in the year of 1791 has been relaxed, Bernhard v Bank of America Nat. Trust & Savings Ass'n., 122 P 2d 892, it does not give the Courts a universal right to apply collaterial estoppel to prevent a trial by jury in violation of

the Constitution where the full facts have not been allowed to be litigated in the first suit.

The decision, Appendix III, is not compatible with the case of Parklane Hosiery Co. v Shore, 439 U.S. 322. Shore, Respondent-Plaintiff, in a class action suit was against Parklane Hosiery Co., Petitioner-Defendant. Shore and the Security and Exchange Commision (SEC) both separately sued Parklane Hosiery Co. The above case was relative to the same Defendant which was not the case at bar. If one reviews the multitude of reference in Parklane Hosiery v Shore, the gist is that the Plaintiff has the opportunity to sue all of the Defendants and privies in the same suit to prevent switching adversaries. In Bernhard v Bank of America Nat. Trust & Savings Ass'n., 19 Cal 2d 813, 122P 2d 895 it states: "Thus defensive collaterial estoppel

gives a Plaintiff a strong incentive to join all potential Defendants in the first action if possible." This was attempted in the case at bar but was denied by the Family Court. Appendix I.

CONCLUSION

There is no known law applicable to the case at bar. In this case the Court barred the Respondent from the first case in the Family Court requiring the arguements for the first time to be presented to a jury in the second case in the Circuit Court. This case must be determined in the United States Supreme Court for a right of trial by jury where there has been no previous decision relative to the Respondent and lack of due process in the Courts of Hawaii. Respectfully submitted,

Robert J. Williamson

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Phone: (808) 923-7159

DATED:
2/25/85

CERTIFICATION

I hereby certify that copies of the Petition for Writ of Certiorari have been served to each of the following by certified first class mail.

Alexander L. Stevas, Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543
(40 copies)

Paul Mullin Ganley
2040 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
(3 copies)

APPENDIX

APPENDIX I

IN THE FAMILY COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

ALISON M. VAUGHAN, Plaintiff,	)	FC-M No. 316
vs.	)	
ROBERT J. WILLIAMSON, Defendant.	)	

PARTIAL TRANSCRIPT OF PROCEEDINGS

before the HONORABLE DANIEL G. HEELY, Judge, presiding on February 23, 1982.

APPEARANCES:

JOHN P. GILLMOR, Esq. for Plaintiff

ROBERT J. WILLIAMSON Pro Se

MR. WILLIAMSON: But I will could present my case on fraud for a half a million dollars.

THE COURT: Not in front me, you can't. That's something that I think you're going to have to do somewhere else. I don't think I have any jurisdiction to do that.

MR. WILLIAMSON: It's fraud.

THE COURT: Yeah, but I have no jurisdiction to award damages against anybody. This is a Family Court. It's not a civil Court where you might sue somebody.

Tape No. 82-43, Log Nos. 1720-1850

DATED at Honolulu, Hawaii, this 9th day of August 1983.

signed

Anna Awana, Transcriber

APPENDIX II Filed February 13, 1984

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

ROBERT J. WILLIAMSON, Plaintiff,	CIVIL NO. 75460
vs.	DECISION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
JOHN P. GILLMOR, Defendant.	

Before: Honorable Judge Philip T. Chun

Plaintiff, Robert J. Williamson, in this action seeks damages for alleged fraud, misconduct, perjury and collusion on the part of defendant, John P. Gillmor, in connection with legal service he performed for Plaintiff's ex-wife.

This suit is only one of a series of actions brought by Plaintiff against Defendant subsequent to a 1975 Hawaii Family Court decision enforcing Plaintiff's ex-wife's Massachusetts divorce decree and judgment.

In 1980, the Intermediate Court of Appeals in Vaughan v. Williamson, 1 Haw.

App. 496, 621 P. 2d 387 (1980), affirmed the 1975 Hawaii Family Court decision.

In 1982 the Family Court denied a motion asking that the judgment be set aside for reasons of fraud and misconduct finding no basis for such an allegation. The Court also denied a subsequent motion for reconsideration on the matter. In both of these motions, Plaintiff argued fraud and misconduct on the part of Family Court personnel and the Defendant.

Plaintiff then again appealed these decisions to the Intermediate Court of Appeals. In 1983, the Intermediate Court of Appeals found that there was no merit in Plaintiff's contentions of fraud and misconduct and therefore dismissed the appeal. Vaughan v. Williamson, No. 8798, Memorandum Opinion, April 5, 1983.

On January 18, 1983, Plaintiff

commenced this action setting forth substantially the same allegation previously litigated.

DECISION

This Court, having reviewed the files, memoranda and pleadings as set forth by counsel, finds that Plaintiff is collaterally estopped from re-litigating issues already ruled upon by other Courts within this jurisdiction.

ORDER

It is therefore ordered that Defendant Motion for Summary Judgment is hereby granted and this case dismissed because there are no genuine issues of material facts.

signed

Judge Philip T. Chun,

Administrative Judge

APPENDIX III Filed November 14, 1984

No. 9840

IN THE INTERMEDIATE COURT OF APPEALS,
STATE OF HAWAII

ROBERT J. WILLIAMSON, Plaintiff-Appellant,	CIVIL NO. 75460
v.	APPEAL FROM DECISION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FILED FEBRUARY 13, 1984
JOHN P. GILLMOR, Defendant-Appellee.	
	HONORABLE PHILIP T. CHUN, Judge

Before; Honorable Judges James Burns, Walter Heen and Harry Tanaka.

MEMORANDUM OPINION

Plaintiff Robert J. Williamson (Williamson) appeals from the summary judgment in favor of defendant John P. Gillmor (Gillmor) which dismissed the case. We affirm.

The germination of this case was in 1975 when Gillmor, as attorney for Williamson's former wife, Alison M. Vaughan (Alison), commenced an action against Williamson in the family court

(First Circuit Family Court FC-M No. 316) to establish and enforce a Massachusetts divorce decree and three judgment-executions decrees. In 1976, the family court ordered, inter allia, the enforcement of the three Massachusetts "judgment-executions" totaling $40,067.50, which order was affirmed by this court. Vaughan v. Williamson, 1 Haw App. 496, 621 P. 2d 387 (1980).

On April 13, 1982, the family court denied Williamson's motion for relief under Rule 60(b)(3), Hawaii Family Court Rules (HFCR) (1982), which we affirmed in Vaughan v. Williamson, ICA Memorandum Opinion (No. 8798, April 5, 1983) (hereinafter "Vaughan II").

On January 18, 1983, Williamson filed a complaint in First Circuit Civil No. 75460 charging Gillmor with (1) "lack of due precess," (2) concealment of fraud, (3) fraud and misconduct, (4) perjury,

and (5) collusion, and seeking damages.1/ Attached to the complaint were Williamson's affidavit and three exhibits which set forth the details of the alleged wrongful acts and ommissions of Gillmor. The details relate to matters that transpired in the family court in FC-M No. 316.

On February 13, 1984, the circuit

1/ In his complaint Williamson prayed for:

1. An award of more than $24,000 to reimburse him the amount that had been garnished from his wages and assets.

2. An award of $40,067.50 to cover the amount of the judgment against him in favor of Alison in FC-M No. 316.

3. An award of "at least $75,000" for the time he spent educating and defending himself in FC-M No. 316.

4. An award to cover the amount of Alison's attorney's fees that Williamson is required to pay in FC-M No. 316.

5. An award of $500,000 for punitive damages.

court granted a summary judgment in Gillmor's favor and dismissed the case. Williamson's timely appeal followed.

I.

It is clear that under Rule 56(c), Hawaii Rules of Civil Procedure (1981), summary judgment is proper where the record indicated that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law. See Hulsman v. Hemmeter Development Corp., 65 Haw. 58, 647 P. 2d 713 (1982); Vlasaty v. Pacific Club, 4 Haw. App. 556, 670 P. 2d 827 (1983); Bank of Honolulu v. Anderson, 3 Haw. App. 545, 654 P. 2d 1370 (1982).

The circuit court determined (1) that there was no factual dispute the Williamson's complaint raised the identical issues litigated and determined in FC-M No. 316 on Williamson's motion for relief under Rule 60(b)(3), HFCR,

and on his motion for reconsideration and in Vaughan II on appeal and (2) that Gillmor was entitled to a judgment under the doctrine of collateral estoppel. We agree.

A.

A review of the complaint, Williamson's affidavit, and exhibits attached thereto in Civil No. 75460 reveals that the particulars of the charges against Gillmor are as follows: (1) "lack of due process" because Gillmor failed to serve on Williamson copies of garnishment orders in FC-M No. 316; (2) concealment of fraud, fraud, and misconduct because Gillmor "fraudulently concealed the fact that the three Executions presented to the family court for back alimoney (sic) and support of $40,067.50 were for goods, chattel and land in Massachusetts and not for money Judgment obtained in the Hawaii Family Court" (Record at 6);

(3) perjury because in a contempt proceeding in FC-M No. 316, Gillmor filed an affidavit in which he falsely stated what Williamson had testified to concerning certain stock certificates; and (4) collusion because Gillmor had "the decks stacked in the Family Court" regarding Judges Lum, Honda, West, Woo, and Heely and because Gillmor's wife was a per diem family court district judge.

We have carefully reviewed the record in FC-M No. 316 and find that all of the issues raised by Williamson in this case as set forth above were raised, litigated and decided in FC-M No. 316 by the "Motion for Allegation of Fraud Pursuant to Rule 60(b)(3)" filed on November 22, 1977 (FC-M No. 316 Record at 543-71) and "Defendant's Motion for Reconsideration of Decision on Motion for Alligation (sic) of Fraud Pursuant to Rule 60(b)(3)" filed on April 19, 1982

(FC-M No. 316 Record at 920-31) and in the appeal in Vaughan II. In FC-M No. 316, the allegations of "lack of due process," concealment of fraud, fraud and misconduct, perjury, and collusion were lumped together under the category of "fraud and collusion." In denying Williamson's motion for reconsideration, the family court held that his "'fraud and collusion' allegations are completely devoid of merit." (FC-M No. 316, Record at 967) (emphasis in original).

B.

Under the res judicata doctrine, a court's judgment "is a bar to a new action in any court between the same parties or their privies concerning the same subject matter(.)" In re Bernice P. Bishop Estate, 36 Haw. 403, 416 (1943) Williamson asserts, however, that since Gillmor was neither a party nor the privy of Allison in FC-M No. 316, the

family court's decision and order therein affirmed in Vaughan II do not preclude this action against Gillmor. We disagree.

In Ellis v. Crockett, 51 Haw. 45, 451 P. 2d 814 (1969), our supreme court stated:

> Collateral estoppel is an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies. Yuen v. London Guarantee and Accident Co., 40 Haw. 213, 223 (1953); Henderson v. Pence, 50 Haw. 162, 163, 434 P. 2d 309, 310 (1967). Collateral estoppel also precludes relitigation of facts or issues previously determined when it is raised defensively by one not a party in a prior suit against one who was a party in that suit and who himself raised and litigated the fact or issue.

Id. at 55-56, 451 P. 2d at 822 (emphasis added). See also Morneau v. Stark Enterprises, Ltd., 56 Haw. 420, 539 P. 2d 472 (1975); Rosa v. CWJ Contractors, Ltd., 4 Haw. App. 210, 664 P. 2d 745 (1983)

Williamson raised and litigated in

FC-M No. 316 the identical facts and issues raised in this case and those facts and issues were determined adversely to him. Thus, under the defensive use of the collateral estoppel doctrine, Gillmor (an attorney, but not a party, in FC-M No. 316) could rely on the family court's decision and order as conclusively adjudicating in his favor the identical facts and issues raised by Williamson in this case. Consequently, Gillmor was entitled to the summary judgment as a matter of law.

II.

Williamson contends that the circuit court's granting a summary judgment "by-passes" his right to a trial by jury under the seventh amendment of the United States Constitution. This contention is without merit. See Parklane Hosiery Co. v. Shore, 439 U.S.

322, 99 S. Ct. 645, 58 L.Ed.2d 552

(1979).

Affirmed.

DATED: Honolulu, Hawaii,
November 14, 1984

signed

Robert J. Williamson,
plaintiff-appellant,
pro se, on the briefs.

Paul Mullin Ganley
on the brief for
defendant-appellee.

APPENDIX IV. Filed November 30, 1984

No. 9840

IN THE SUPREME COURT OF THE STATE OF HAWAII, OCTOBER TERM 1983

ROBERT J. WILLIAMSON, Plaintiff-Appellant,	CIVIL NO. 75460
vs.	APPEAL FROM DECISION AND ORDER GRANTING DEFENDANT'S
JOHN P. GILLMOR, Defendant-Appellee.	MOTION FOR SUMMARY JUDGMENT FILED FEBRUARY 13, 1984
	HONORABLE PHILIP T. CHUN, Judge

ORDER

The Application for Writ of Certiorari filed November 23, 1984 is hereby denied.

DATED: Honolulu, Hawaii, November 30, 1984

FOR THE COURT:

signed

H. Lum
Chief Justice

Robert J. Williamson
petitioner pro se